



Billing Code: 8026-03

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Docket No. SBA-2019-0001]

RIN 3245-AH08

Streamlining Surety Bond Guarantee Program

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is soliciting comments from the public on identifying which of SBA's regulations relating to SBA's Surety Bond Guarantee Program (SBG) should be repealed, replaced, or modified because they are obsolete, unnecessary, ineffective, or burdensome. SBA is also soliciting comments from the public on how SBA can improve the surety bond products, procedures, forms, and reporting requirements of the SBG Program.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AH08, docket number [SBA-2019-0001] by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Jerianne Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street, S.W., 8th floor, Washington, D.C. 20416.

- Hand Delivery/Courier: Jermanne Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street, S.W., 8th floor, Washington, D.C. 20416.

All comments will be posted on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Jermanne Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street, S.W., 8th Floor, Washington, DC 20416, or send an email to Jermanne.perry@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Jermanne Perry, Management Analyst, Office of Surety Guarantees, at (202) 401-8275 or Jermanne.perry@sba.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

The U.S. Small Business Administration (SBA) guarantees bid, payment, and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee, authorized pursuant to Part B of Title IV of the Small Business Investment Act of 1958, 15 U.S.C. 694a *et seq.*, gives Sureties an incentive to provide bonding for small businesses and, thereby, assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the

Surety's loss should a contractor default on the underlying contract. SBA is authorized to guarantee a Surety for a contract up to \$6.5 million and, with the certification of a contracting officer of a Federal agency, up to \$10 million. For more information about SBA's Surety Bond Guarantee Program, see <https://www.sba.gov/funding-programs/surety-bonds>.

The regulations governing the Surety Bond Guarantee (SBG) Program are codified in 13 CFR part 115: Subpart A of part 115 contains provisions that apply to all surety bond guarantees; subpart B contains provisions that apply to the bond guarantees subject to prior approval by SBA; and subpart C contains provisions that apply to the bond guarantees that Preferred Surety Bond Sureties may issue under delegated authority. SBA is inviting comments from the public on identifying which of these regulations should be repealed, replaced, or modified because they are obsolete, unnecessary, ineffective, or burdensome. (In 2017, SBA published a similar request that covered all the agency's programs and regulations, see 82 FR 38618 (August 15, 2017), but SBA received no comments on part 115. By focusing only on the SBG Program, SBA believes that this request is more likely to receive the attention of interested parties.) In addition, SBA is interested in receiving comments from the public on how SBA can improve the surety bond products, procedures, forms, and reporting requirements of the SBG Program.

SBA is also considering whether to make changes to certain specific regulations and invites comments from the public on these issues. For example, SBA has received requests from Prior Approval Sureties to change the criteria in § 115.30(d)(2) for using the Quick Bond Guarantee Application and Agreement (SBA Form 990A), including

increasing the maximum contract amount of \$400,000, the maximum contract period of 12 months, the \$1,000 per day limit on liquidated damages, and eliminating the prohibition against contracts involving demolition.

In addition, under § 115.14(a)(3), a contractor loses eligibility for future SBA assistance if the Surety has established a claim reserve of at least \$1,000 for an outstanding SBA-guarantee bond. SBA is considering whether the claim reserve amount is set at the correct amount to mitigate future risk and, if not, what the amount should be. SBA is also considering whether the regulations that set the minimum amount for collecting or refunding the Principal and Surety guarantee fees, including §§ 115.32(d)(2) and (3) and 115.67(a) and (b), should be changed by increasing the amount from the current \$40.

II. List of Questions for Commenters

The list of questions below is meant to assist in the formulation of public comments and is not intended to restrict the issues that may be addressed. SBA requests that commenters identify the specific regulation at issue and explain, in as much detail as possible, why the regulation should be streamlined, expanded, or repealed, including estimated cost savings and benefits to small businesses and other stakeholders.

1. Are there regulations in 13 CFR part 115 that have become unnecessary or ineffective and, if so, what are they?

2. Are there regulations in 13 CFR part 115 that can be repealed without impairing SBA's Surety Bond Guarantee Program and, if so, what are they?

3. Are there regulations in 13 CFR part 115 that have become outdated and, if so, how can they be modernized to better accomplish their regulatory objectives?

4. Are there regulations in 13 CFR part 115 that are still necessary, but which have not operated as well as expected such that a modified approach is justified, and what is that approach?

5. Are there regulations or regulatory processes in 13 CFR part 115 that are too complicated or could be streamlined to achieve regulatory objectives more efficiently?

6. Are there any technological developments that can be leveraged to modify, streamline, or repeal any existing regulatory requirements in 13 CFR part 115?

7. Should SBA make changes to any of the criteria set forth in § 115.30(d)(2) under which a Prior Approval Surety may use the Quick Bond Guarantee Application and Agreement (SBA Form 990A)? If yes, describe the change and provide the reason for your response.

8. Under § 115.14(a)(3), a contractor (and its affiliates) loses eligibility for further SBA bond guarantees if the Surety has established a claim reserve for an SBA-guaranteed bond of at least \$1,000. Should SBA change the claim reserve amount? If so, describe the change and provide the reasons for your response.

9. Should SBA increase the minimum amount for collecting or refunding Principal and Surety guarantee fees from \$40? If yes, what should the amount be? Please provide reasons for your response.

10. In addition to the types of bonds that are currently offered through the SBG Program, are there any other surety bond products that you would like SBA to offer through its SBG Program that would assist small businesses in need of government assistance? If so, describe the product and how it would benefit small businesses.

Interested parties are invited to provide any other comments that they may have relating to the concerns described in this advance notice of proposed rulemaking. We ask that you provide a brief justification for any suggested changes.

Authority: 15 U.S.C. 692, 694 and 695; Sec. 12079, Pub. L. 110-246, 122 Stat. 1651; E.O. 13771; E.O. 13777.

Dated: May 23, 2019.

Christopher M. Pilkerton,
Acting Administrator.

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